

- B. in extraordinary circumstances, the department has the discretion to waive this requirement. Waiver requests must be in writing with supporting documentation. Denial of a waiver is not appealable.

### Mediation

Upon receipt of a request for due process hearing the parties will be offered the opportunity to mediate their dispute. Both parties must agree to mediation unless federal law provides to the contrary, and mediation will be provided at no cost to either party.

#### A. Process

The parties must mutually agree on a mediator from the trained mediator list maintained by the Department of Elementary and Secondary Education, Special Education Division.

- 1) Mediation must be scheduled within fifteen days of the selection of a mediator.
- 2) Mediation must be conducted at a time and place mutually agreed upon by the parties.
- 3) Mediation must be completed within thirty days of the agreement to mediate.
- 4) Any agreement reached during mediation must be in writing and delivered to each party.
- 5) No more than three persons can accompany each party unless the parties mutually agree on additional participants.
- 6) No attorney shall participate or attend on behalf of any party at the mediation session. However, parents may be accompanied by a lay advocate.
- 7) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under Part B of IDEA.
- 8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to commencement of the process.

#### B. Mediator Qualifications

- 1) Mediators must be impartial and free of any conflict of interest.
- 2) Mediators shall not be employees of **an LEA, or** a public agency which is involved in the education or care of the student, or **[employees]** of the State Board of Education. A person who otherwise qualifies as a mediator is not an employee of the State Board of Education or LEA solely because he or she is paid by the agency to serve as a mediator.
- 3) Mediators must have a minimum of 16 hours of training as a mediator.
- 4) Mediators, to be placed on the Department's mediator list, must meet the above requirements, and must: agree to be compensated at a rate set by the Department, and provide the Department with a resume or biographical statement reflecting their qualifications.
- 5) Mediators must be knowledgeable in laws and regulations relating to the provision of special education and related services.

#### C. Mediation in the Absence of a Due Process Request

Parties have the right to seek mediation of their disputes outside of the state mediation process and due process system. However, the Department will only pay